IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P. No.644 of 2002

BHUPENDRA SHARMA SON OF LATE DURGA PRASAD SHARMA AGED 44 YEARS, CONVEYOR, KISHAN SANGHARSH SAMITEE, AND PRESIDENT OF WATER USER'S ASSOCIATION TEKARI RESIDENT OF VILLAGE TEKARI, DISTRICT RAIPUR.

PETITIONER

VERSUS

1. STATE OF CHHATTISGARH THROUGH THE SECRETARY, MINISTRY OF WATER RESOURCES, DAU KALYAN SINGH BHAWAN, RAIPUR.

2. STATE OF MADHYA PRADESH THROUGH THE SECRETARY, MINISTRY OF IRRIGATION, VALLABH BHAWAN, BHOPAL.

P.R. No. 642/02
Presented by Shri B.P. Sharma
dated 26.2.02

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR ORDER(S), AND/OR DIRECTION(S) IN THE NATURE OF WRITS

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HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

WRIT PETITION NO. 644 OF 2002

Bhupendra Sharma

Versus

State of Chhattisgarh & another

Order for consideration

Sd/-

CHIEF JUSTICE
19 -04-2005.

Hon'ble Shri V.K. Shrivastava, J.

Post for 21st / April, 2005.

Sd/-

CHIEF JUSTICE
21 -04-2005.

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HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM : Hon'ble Shri A.K. Patnaik, C.J.
& Hon'ble Shri V.K. Shrivastava, J

WRIT PETITION NO. 644 OF 2002

Bhupendra Sharma

Versus

State of Chhattisgarh & another

Present : Mr. B.P. Sharma, learned counsel for the petitioner.

Mr. V.V.S. Murthy, learned Dy. Advocate General with Mr. S.K. Malaiya, Officer-in-Charge for State of Chhattisgarh / Respondent No.1

Mr. Shailendra Shukla, learned counsel for the State of Madhya Pradesh / Respondent No.2

ORDER

(Passed on 21st April, 2005)

The following order of the Court was passed by A.K. Patnaik, CJ.:

The petitioner is an agriculturist and is the President of Water Users' Association constituted under the Madhya Pradesh Sinchai Prabandhan Main Krishko Ki Bhagidari Adhiniyam, 1999. He is also the Convener of Kishan Sangharsh Samiti. He has filed this public interest litigation to protect the interest of the farmers in the State of Chhattisgarh. By Notification No.CR-9-92 MED-31-II, dated 30th April, 1993 issued under Sub-section (2) of Section 37 of the Madhya Pradesh Irrigation Act, 1931 read with Rule 37 of the Madhya Pradesh Irrigation Rules, 1974, the State Government of Madhya Pradesh fixed the rates for supply of water from irrigation works in Madhya Pradesh for agriculture purposes w.e.f. 1st October, 1992 at the rates herein given below:

Sl. No.	Name of Crops	Water rates in Rupees per acre per crop
1.	Rice On demand On long term	 24.00 22.00
2.	Wheat 1. Maximum three watering including palewa	 25.00

Pursuant to the said notification, farmers in the State of Madhya Pradesh were being supplied water for Kahrif and Rabi crops at the rates as fixed in the said notification dated 30th April, 1993. But thereafter by a Notification No.CR-9-92-MA-31-953 dated 08.06.1999 issued under Sub-section (2) of Section 37 of Madhya Pradesh Irrigation Act, 1931 read with Rule 36 of Madhya Pradesh Irrigation Rules 1974, the water rates of water supply from irrigation works in Madhya Pradesh were increased to Rs.81/- per acre per crop. The petitioner has prayed for quashing of the said notification dated 08.06.1999 and for restraining the respondent / State Authorities and their agents, servants and employees from recovering the irrigation tax from the farmers of the State of Chhattisgarh at the increased rate as fixed in the aforesaid impugned notification dated 08.06.1999.

2. Mr. B.P. Sharma, learned counsel for the petitioner submitted that the Madhya Pradesh Irrigation Act, 1931 and the Madhya Pradesh Irrigation Rules, 1974 are not applicable to the new State of Chhattisgarh formed by the Madhya Pradesh Re-organization Act, 2000, inasmuch as the said Act and the Rules have not been adapted by the State Government under Section 79 of the Madhya Pradesh Re-organization Act, 2000. He argued that since the Madhya Pradesh Irrigation Act, 1931 and the Madhya Pradesh Irrigation Rules, 1974 have not been adapted and made applicable to the State of Chhattisgarh by the State Government of Chhattisgarh under Section 79 of the Madhya Pradesh Re-organization Act, 2000, the impugned notification dated 08.06.1999 issued under Section 37 of the Madhya Pradesh Irrigation Act, 1931 read with the Madhya Pradesh Irrigation Rules, 1974 is not applicable to the State of Chhattisgarh after the State of Chhattisgarh was formed under the Madhya Pradesh Re-organization Act, 2000.

3. In reply to the aforesaid submission, Mr. V.V.S. Murthy, Dy. Advocate General for the State of Chhattisgarh produced a copy of the notification dated 31.10.2002 of the Government of Chhattisgarh, Water Resources Department to show that in exercise of the powers conferred by Section 79 of the Madhya Pradesh Re-organization Act, 2000, the State Government has made an order adapting and extending the aforesaid Act and the Rules to the State of Chhattisgarh and the said Act and the Rules after such adaptation are renamed as the Chhattisgarh Irrigation Act, 1931 and the Chhattisgarh Irrigation Rules, 1974. Mr. Murthy submitted that the said notification dated 31.10.2002 also makes it clear that anything done or any action taken in exercise of the powers conferred by Madhya Pradesh Irrigation Act, 1931 and Madhya Pradesh Irrigation Rules, 1974 shall continue to be force in the State of Chhattisgarh.

4. The notification dated 31.10.2002 issued by the State Government of Chhattisgarh, Water Resources Department, is extracted herein below:

"GOVERNMENT OF CHHATTISGARH
WATER RESOURCES DEPARTMENT
MANTRALAYA
DAU KALYAN SINGH BHAWAN
RAIPUR.

No.3673/4270/WRD/2002 Raipur/dated, 31.10.2002

NOTIFICATION

In exercise of the powers conferred by Section 79 of the Madhya Pradesh Re-Organization Act, 2000 (No.28 of 2000), the State Government hereby makes the following orders namely: -

ORDER

1. (i) This order may be called the Adaptation of Law's Order, 2002.
   (ii) It shall come into force in the whole State of Chhattisgarh on the first day of November, 2000.

2. The Laws as amended from time to time specified in the Schedule to this order which were in force in the State of Madhya Pradesh immediately before the formation of the State of Chhattisgarh, are hereby extended to and shall be in force in the State of Chhattisgarh until repealed or amended, or subject to the

modification that in all the laws for the words "Madhya Pradesh" wherever they occur the word "Chhattisgarh" shall be substituted.

3. Anything done or any action taken (including any appointment, notification, notice, order, form, regulation, certificate of licence) in exercise of the powers conferred by or under the laws specified in the schedule shall continue to be in force in the State of Chhattisgarh.

SCHEDULE

S.No.	NAME OF THE LAWS
01.	Madhya Pradesh Irrigation Act 1931 & Madhya Pradesh Irrigation Rules 1974
02.	Madhya Pradesh Irrigation Department (Non Gazetted) Service Recruitment rules 1969.
03.	Madhya Pradesh Irrigation Engineering Service (Gazetted) Recruitment rules 1968.
04.	Madhya Pradesh Sinchai Prabhandhan Main Krishko Ki Bhagidari Adhiniyam 1999.

By order and in the name of
the Government of Chhattisgarh
sd/-
(C.K. KHAITAN)
Secretary
Water Resources Dept."

5. It will be clear from the aforesaid notification dated 31.10.2002 that the State Government has in exercise of powers under Section 79 of the Madhya Pradesh Re-organization Act, 2000 adapted and extended the Madhya Pradesh Irrigation Act 1931 and the Madhya Pradesh Irrigation Rules 1974 and made the same applicable to the State of Chhattisgarh with the change that the said Act and the Rules will be called the Chhattisgarh Irrigation Act 1931 and the Chhattisgarh Irrigation Rules 1974. Clause 3 of the Adaptation of Law's Order 2002 made by the notification dated 31.10.2002 of the Government of Chhattisgarh in the Water Resources Department provides that anything done or any action taken in exercise of the powers conferred by the Madhya Pradesh Irrigation Act 1931 and the Madhya Pradesh Irrigation Rules 1974 *shall continue to be in force in the State of Chhattisgarh.* In view of the aforesaid notification dated 31.10.2002 issued by the Government of Chhattisgarh, Water Resources Department under Section 79 of the Madhya Pradesh Re-organization Act 2000, the contention of Mr. Sharma, learned counsel for the petitioner that the notification dated 08.06.1999

issued under the Madhya Pradesh Irrigation Act 1931 read with the Madhya Pradesh Irrigation Rules 1974 is not applicable to the State of Chhattisgarh after formation of new State of Chhattisgarh is thus misconceived and has no merit.

6. Mr. B.P. Sharma, learned counsel for the petitioner next submitted that Sub-section (1) of Section 37 of the Madhya Pradesh Irrigation Act 1931 provides that water may be supplied from a canal under clauses (a), (b), (c), (d) and (e) thereof for the purposes indicated therein and Sub-section (2) of Section 37 of the said Act provides that charges for the supply of water under clauses (a), (b), (c) or (e) of Sub-section (1) of Section 37 shall be paid at such rates as may be fixed by the State Government in accordance with the Rules made under this Act. He submitted that thus the Legislature has delegated the power to fix the charges for supply of water under Section 37 of the said Act to the State Government in accordance with the Rules. He pointed out that accordingly Rule 36 of the Madhya Pradesh Irrigation Rules 1974 provides the manner in which the rates for supply of water under clauses (a), (b) & (c) of Sub-section (1) of Section 37 of the said Act shall be fixed by the State Government. He submitted that Rule 36 of the Madhya Pradesh Irrigation Rules 1974 provides that proposals for fixation of rates for the supply of water under clauses (a), (b) or (c) of Sub-section (1) of Section 37 shall be considered by the Standing Committee for irrigation and thereafter, the said proposals and the opinion of the Standing Committee shall be placed on the table of the Madhya Pradesh State Legislative Assembly. The said Rule 36 further provides that the State Government shall give the Assembly an opportunity of discussing them and shall take into consideration any resolution concerning them that may be passed by the Legislative Assembly before fixing the rate to be charged. He vehemently argued that this procedure was by-passed before the impugned notification dated 08.06.1999 was issued fixing the new rates for supply of water from the irrigation works for the agriculture purposes and the impugned notification was issued by the State Government under the proviso to Section 36 of the Rules, which provides that if the State Government considers any case to be so urgent as to necessitate the immediate issue of orders, it could take action at once, but all such orders

issued under the proviso will have to be placed within six months of their issue, before the Standing Committee and thereafter, laid on the table of the Legislative Assembly. Mr. Sharma referred to the provisions of Section 24-A of Madhya Pradesh General Clauses Act 1957 which provides that where, in any Madhya Pradesh Act, it is directed that a rule shall be laid on the table of the Legislative Assembly, then such rule shall be laid, as soon as may be after it is made, before the Legislative Assembly for a total period of thirty days and if, before the expiry of thirty days, the Legislative Assembly adopts a resolution that such a rule should not be made or that any modification be made therein, the rule shall thereafter be of no effect or have effect only in the modified form, as the case may be. He cited the observation of the Supreme Court in the case of **The Quarry Owners' Association vs. The State of Bihar & Ors.**, reported in **AIR 2000 SC 2870** to the effect that when any statute requires mere laying of any notification or Rule before the Legislature before its execution, State Government comes under the scrutiny of the concerned Legislature and each member of the house, subject to its procedure, gets right to discuss the same and they may put questions to the concerned Ministry. Mr Sharma vehemently argued that after the State of Chhattisgarh was formed w.e.f. 01.11.2000, the impugned notification dated 08.06.1999 increasing the rates for supply of water from irrigation works for the agriculture purposes, though affects a large number of farmers in the State of Chhattisgarh, has never been placed before the Legislature of Chhattisgarh and for this reason, the impugned notification should be held to be void and should be quashed by this Court.

7. Mr V.V.S. Murthy, learned Dy. Advocate General for the State of Chhattisgarh relying on the chronological events as indicated in Para 10 of the return filed on behalf of the respondent / State submitted that the impugned notification dated 08.06.1999 fixing the new rates for supply of water from irrigation works for the agriculture purposes was placed before the Irrigation Standing Committee on 02.11.1999 and thereafter recommendation of the Irrigation Standing Committee on the water rates as fixed by the impugned notification was placed before the Madhya Pradesh Legislative Assembly on 26.11.1999 and hence everything has been done and all actions have been taken as required by the proviso to

Rule 36 of the Madhya Pradesh Irrigation Rules 1974, much before the Chhattisgarh State was formed under the Madhya Pradesh Re-organization Act 2000 w.e.f. 01.11.2000. He also relied on the decision of the Supreme Court in the case of **The Quarry Owners Association Vs State of Bihar (supra)** for the proposition that a statutory provision which only requires an order to be placed before the Legislature as soon as may be, after its made, and does not further provide that if such order is not placed it will become invalid, is only a directory and not a mandatory provision and non-compliance with such a provision will not make the order invalid.

8. Section 37 of the Madhya Pradesh Irrigation Act 1931 is quoted herein below :

> **"37. Purposes for which water may be supplied. –**
>
> (1) Water may be supplied from a canal –
>
> (a) under an irrigation agreement, in accordance with the provisions of Chapter VI,
>
> (b) on demand, for the irrigation of specified areas,
>
> (c) to supplement a village tank,
>
> (d) for industrial, urban or other purposes not connected with agriculture,
>
> (e) for the irrigation of a compulsorily assessed area.
>
> (2) Charges for the supply of water under clause (a), (b), (c) or (e) of sub-section (1) shall be paid at such rates as may be fixed by the State Government in accordance with rules made under this Act."

Sub-section (2) of Section 37 of Madhya Pradesh Irrigation Act 1931 provides that charges for supply of water under clauses (a), (b), (c) or (e) of sub-section (1) shall be paid at such rates as may be fixed by the State Government in accordance with rules made under this Act.

9. Rule 36 of the Madhya Pradesh Irrigation Rules 1974 provides the manner in which the State Government is to fix such rates for the supply

of water under clauses (a), (b) or (c) of sub-section (1) of Section 37 of the Madhya Pradesh Irrigation Act 1931. The said Rule 36 is quoted herein below :-

> "36. *Section 37*- Proposals for the fixation of rates for the supply of water under clause (a), (b) or (c) of sub-section (1) of Section 37 shall be considered by the Standing Committee for irrigation after which the said proposals and the opinion of the Standing Committee shall be placed on the table of the Madhya Pradesh Legislative Assembly. The State Government shall give the Assembly an opportunity of discussing them and shall take into consideration any resolution concerning them that may be passed by the Legislative Assembly before fixing the rate to be charged.
>
> Provided that if the State Government considers any case to be so urgent as to necessitate the immediate issue of orders, if any take action at once.
>
> All orders issued under this proviso, shall, within six months of their issue, be placed before the Standing Committee and thereafter laid on the table of the Legislative Assembly."

It will be clear from the aforesaid Rule 36 that normally the proposal for the fixation of rates for the supply of water under clause (a), (b) or (c) of sub-Section (1) of Section 37 of the said Act is to be considered by the Standing Committee for irrigation after which the said proposals and the opinion of the Standing Committee are to be placed on the table of the Legislative Assembly and the State Government is to give the Assembly an opportunity of discussing them and take into consideration any resolution concerning them that may be passed by the Legislative Assembly before fixing the rate to be charged. But under the proviso, if the State Government considers any case to be so urgent as to necessitate the immediate issue of orders, it may take action at once and fix the rates for supply of water, but all such orders fixing the rates for supply of water under the proviso are to be placed before the Standing

Committee for irrigation within six months of the issue of orders and thereafter laid on the table of the Legislative Assembly.

10. It appears from the list of chronological events given in para 10 of the return filed by the State of Chhattisgarh that the impugned notification / order fixing the higher rates for supply of water was issued on 08.06.1999 and within six months thereafter the said notification was placed before the Standing Committee for irrigation on 02.11.1999 and the matter was placed before the Legislative Assembly on 26-11-1999. Hence the requirements of the proviso to Rule 36 of the Madhya Pradesh Irrigation Rules 1974 had been duly complied and the proposals in the impugned notification were placed before the Madhya Pradesh Legislative Assembly. It was only on 01.11.2000, about 11 months and 4 days after the impugned notification was placed before the Legislative Assembly of the State of Madhya Pradesh that the State of Chhattisgarh was formed by the Madhya Pradesh Re-organization Act 2000. These facts would show that by the time the State of Chhattisgarh came to be formed the impugned notification dated 08-06-99 had been duly issued and placed before the Standing Committee for the irrigation and the Legislative Assembly of the State of Madhya Pradesh in accordance with the proviso to Rule 36 of the Madhya Pradesh Irrigation Rules 1974. Nothing has been brought on record to show that the Legislative Assembly of the State of Madhya Pradesh passed any resolution either modifying the water rates or not approving the water rates as fixed in the impugned order/notification dated 08-06-99.

11. Clause 3 of the Adaptation Law's Order 2002 issued by the Government of Chhattisgarh, Water Resources Department under the Notification dated 31-10-2002 adapting the Madhya Pradesh Irrigation Act 1931 and the Madhya Pradesh Irrigation Rules 1974 expressly states that anything done or any action taken (including any appointment, notification, notice, order, form, rule, regulation, certificate of licence) in exercise of the powers conferred by or under the Madhya Pradesh Irrigation Act 1931 or Madhya Pradesh Irrigation Rules 1974 shall continue to be in force in the State of Chhattisgarh. The result is that the impugned order/ notification dated 8-6-99 issued under the Sub-section(2) of Section 37 of the Madhya Pradesh Irrigation Act,1931 read with Rule 36 of the Madhya Pradesh

Irrigation Rules 1974, continues to be in force in the State of Chhattisgarh and the said order/notification dated 08-06-99 cannot be held to be ultra vires or void merely because after the formation of the State of Chhattisgarh on 01-11-2000 the said order/notification dated 08-06-99 has not been placed before the Legislative Assembly of the State of Chhattisgarh.

12. For the aforesaid reasons, we find no merit in this writ petition and we accordingly dismiss the same. But we make it clear that the dismissal of this writ petition will not prevent the State Government or the State Assembly of the State of Chhattisgarh to consider and lower the rates for supply of water from irrigation works for agriculture purposes, if they so deem fit and proper, in accordance with the provisions of Chhattisgarh Irrigation Act 1931 and Chhattisgarh Irrigation Rules 1974.

Sd/-

Chief Justice

21 **- 04-2005.**

Sd/-

V.K. Shrivastava

Judge

21 **-04-2005.**

Subbu